

charge him in his personal character *de bonis propriis* (see *e converso* *Sasser v. Walker*, 5 G. & J. 102); and there, where an administrator had, in his life-time, received payment in money for a claim of his intestate, which he turned into goods, and returned the goods as assets, and afterwards sold them, it was held that the administrator *de bonis non* of the intestate was, on the death of the first administrator, liable under the Act of 1820 for the money to a party who had made a good title to the claim for which the latter had so received payment. On the other hand, it follows from what has been said that the executor of the executor is not answerable to the administrator *de bonis non* of the first testator for the value of assets wasted or destroyed.¹¹ Nor can he disturb the title of a purchaser to property which the latter has acquired under an agreement between him and the first administrator, and which it was competent for him to make. If any loss is sustained by such an agreement, the remedy of all interested is against the first administrator, *Hagthorp v. Neale*, 7 G. & J. 13.

It is further to be observed upon the Act of 1820, that it has been always held, that an order of the Orphans Court is necessary to vest title in the administrator *de bonis non* to the securities and monies which he may recover from the executor of the executor, *West v. Chappell*, 5 Gill, 228; *Johnson v. Farmers' Bank*, 11 Md. 412.¹²

Sales by executors and administrators.—A check, however, is put on the power of the executor to commit a *devastavit* by the Act of 1843, ch. 304, Code, Art. 93, secs. 274-277; see secs. 272, 273.¹³ By sec. 274¹⁴ it is pro-

¹¹ And, of course, the bondsman of the executor is not so liable. But the beneficiaries under the will may in such case apply to a court of equity for the appointment of a trustee who can maintain an action on the bond. *Morrow v. Fidelity Co.*, 100 Md. 256.

¹² An order of the Orphans Court is also necessary under this section to enable the administrator *d. b. n.* to bring action against the former administrator, or his representatives, or bondsmen. Both orders must be alleged in the declaration. *State v. Hart*, 57 Md. 234; *State v. Robinson*, 57 Md. 486.

¹³ Code 1911, Art. 93, secs. 284-287, 281, 282.

¹⁴ Code 1911, Art. 93, sec. 284, amended by Act of 1906, ch. 537, so as to validate sales of leasehold property previously made by executors or administrators without a previous order but finally ratified by the court.

Prior to the Act of 1843 an executor could sell any personal property of his decedent, without previous authority from the Orphans Court. *Seldner v. McCreery*, 75 Md. 292; *Brooks v. Bergner*, 83 Md. 353. Cf. *Carter v. Van Bokkelen*, 73 Md. 179.

A mortgage is property within the meaning of this section and cannot be sold without an order of court; and it is immaterial that it was not owned by the decedent but only purchased by the executor with the funds of the estate. *Alexander v. Fidelity Co.*, 108 Md. 541. But a sale of mortgaged property by an executor of the owner of the mortgage may be made without an order of court, this being merely a proceeding to collect a debt. *Chilton v. Brooks*, 71 Md. 451.